

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CINDY ALLENDER)	
Claimant)	
VS.)	
)	
NINNESCAH MANOR, INC.)	Docket No. 239,478
Respondent)	
AND)	
)	
BUSINESS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated January 25, 1999, wherein the Administrative Law Judge denied claimant benefits, finding claimant had failed to prove accidental injury arising out of and in the course of her employment with respondent.

ISSUES

Did claimant sustain accidental injury arising out of and in the course of her employment with respondent on the date or dates alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges she suffered accidental injury or a series of accidents through September 28, 1998, while working as a CNA with respondent. Respondent contends claimant's condition did not arise out of and in the course of her employment, as claimant suffered preexisting upper extremity bilateral carpal tunnel problems prior to beginning work for respondent in September 1998.

The only medical evidence in the record dealing with causation is from Dr. Ronald Davis of Preferred Medical Associates Occupational and Environmental Medicine.

Dr. Davis, in his report of October 28, 1998, opined that claimant's symptoms and findings could not progress to the level he diagnosed within a week of claimant beginning her job activities.

Claimant was hired by respondent on September 10, 1998, but did not begin her employment until September 13, 1998. She went through a week of classroom training, followed by a week of hands-on training. The first week of classroom training consisted of 40 hours, and involved few repetitious hand-intensive activities. The second week lasted 50 hours, and was comprised of 25 hours hands-on activities and 25 hours additional classroom activities. In order for claimant's problems to have arisen out and in the course of her employment with respondent, claimant would have had to have developed or aggravated the bilateral carpal tunnel condition while in training.

Claimant first contacted respondent on or around September 24, 28 or 29, 1998, and advised both Patricia Ann Smith, the Director of Nursing, and Ilonda Patterson, the respondent's nurse educator, of her hand problems. At that time, claimant advised Ms. Patterson and Ms. Smith that her problems stemmed from a car wreck which occurred approximately one year before. Claimant acknowledged having hand problems as a result of that accident, including numbness and night awakening.

In proceedings under the Workers Compensation Act, it is claimant's burden to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

In this instance, the Appeals Board finds claimant has not proven accidental injury arising out of and in the course of her employment. It seems more plausible that claimant's carpal tunnel condition stemmed from the car accident, which occurred approximately one year before claimant's employment with respondent. Claimant acknowledges having ongoing hand problems, including numbness and night awakenings, after the accident. In addition, the only medical opinion speaking to causation, that of Dr. Davis, did not support claimant's contentions that her condition is in some way related to her employment with respondent. Therefore, the Appeals Board finds that the Order of the Administrative Law Judge denying claimant benefits in this matter should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated January 25, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Ronald J. Laskowski, Topeka, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director